

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRIAN ALFORD,

Petitioner,

Case No. 2:14-cv-00333-APG-NJK

ORDER

vs.

DWIGHT NEVEN, *et al.*,

Respondents.

This habeas action by a Nevada state inmate comes before the Court on petitioner's application (Dkt. #1) to proceed *in forma pauperis* and motion (Dkt. #2) for appointment of counsel, as well as for initial review under Rule 4 of the Rules Governing Section 2254 Cases.

The pauper application will be granted based upon the state corrections department's financial certificate and documentation.

The Court finds that appointment of counsel is in the interests of justice, considering, *inter alia*: (a) the number and complexity of the potential procedural and substantive issues following upon the conviction for first-degree murder with the use of a firearm; and (b) at least the possibility that some time may remain in the federal limitation period for the assertion of claims by appointed habeas counsel in an amended petition without relation back concerns.¹ The motion for appointment of counsel therefore will be granted.

¹Neither the Court's order nor the appointment of counsel automatically tolls the federal limitation period as to any claim. Petitioner at all times remains responsible for calculating the running of all applicable limitation periods and timely seeking relief in an appropriate proceeding, without regard to any pleading or other deadlines established herein.

1 IT THEREFORE IS ORDERED that the application (Dkt. #1) to proceed *in forma*
2 *pauperis* is GRANTED, such that petitioner will not be required to pay the filing fee.

3 IT FURTHER IS ORDERED that the Clerk of Court shall file the petition.²

4 IT FURTHER IS ORDERED that the motion (Dkt. #2) for appointment of counsel is
5 GRANTED. The counsel appointed will represent petitioner in all proceedings related to this
6 matter, including any appeals or *certiorari* proceedings, unless allowed to withdraw.

7 IT FURTHER IS ORDERED that the Federal Public Defender shall be provisionally
8 appointed as counsel and shall have **thirty (30) days** to undertake direct representation of
9 petitioner or to indicate an inability to do so. If the Federal Public Defender is unable to
10 represent petitioner, the Court then shall appoint alternate counsel. A deadline for the filing
11 of an amended petition and/or seeking other relief will be set after counsel has entered an
12 appearance. The Court anticipates setting the deadline for approximately one hundred fifty
13 (150) days from entry of the formal order of appointment, which does not correlate to any
14 length of time remaining in the federal limitation period. Any deadline established and/or any
15 extension thereof will not signify any implied finding of a basis for tolling during the time period
16 established. Petitioner at all times remains responsible for calculating the running of the
17 federal limitation period and timely presenting claims.

18 IT FURTHER IS ORDERED, so that the respondents may be electronically served with
19 any papers filed through counsel, that the Clerk shall add Attorney General Catherine Cortez
20 Masto as counsel for respondents and shall make informal electronic service of this order
21 upon respondents by directing a notice of electronic filing to her. Respondents' counsel shall
22 enter a notice of appearance within **twenty-one (21) days** of entry of this order, but no further
23 response shall be required from respondents until further order of this Court.

24 IT FURTHER IS ORDERED that counsel additionally shall send a hard copy of all state
25 court record and related exhibits filed to, for this case, the **Las Vegas Clerk's Office**.
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28 ²The filing of the petition does not signify that the petition is free of deficiencies. The *pro se* petition simply is being filed in anticipation of the filing of a counseled amended petition.

1 The Clerk accordingly shall SEND a copy of this order to the *pro se* petitioner (along
2 with a copy of the papers that he submitted), the Nevada Attorney General, the Federal Public
3 Defender, and the CJA Coordinator for this Division. The Clerk further shall regenerate
4 notices of electronic filing of all prior filings herein to both the Nevada Attorney General and
5 the Federal Public Defender.

6 DATED: *march 6, 2014.*

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ANDREW P. GORDON
United States District Judge
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